IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

(SPECIAL ORIGINAL JURISDICTION)

TUESDAY, THE SIXTEENTH DAY OF NOVEMBER

TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No. 17768 OF 2004

Between:

ICL Packing Workers Union,

Regd. No.(F.610), rep.by General Secretary,

Sri Y. Venkat Reddy,S/o. Nagi Reddy,Occ: Belt Operator

R/o. Yerraguntala, Kadapa District.

...PETITIONER

And

1. Assistant Commissioner of Labour & Conciliation Officer, Kadapa.

2. The India Cements Limited, rep.by its Vice President (Manufacturing)

Yerraguntla, Kadapa District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein it is prayed that the High Court

may be pleased to issue an appropriate Writ, Order or Direction, more particularly one in the nature of writ of mandamus calling for records pertaining from the 2nd respondent by declaring that the action of the 2nd respondent in altering the service conditions of the members of the petitioner union without giving any notice under Section 9 (A) of the Industrial Disputes Act (I.D.Act) by calling for the tenders as illegal, arbitrary, contrary to law, contrary to settlement under Section 12 (3) of I.D. Act, in violation of Section 9 (A) of I.D.Act, unfair labour practice and violative of Articles 14, 16, and 21 of the Constitution of India, and grant all consequential benefits;

COUNSEL FOR THE PETITIONER: MR.A.K.JAYAPRAKASH RAO

COUNSEL FOR THE RESPODENTS: GP FOR LABOUR

The Court made the following order:

ORDER:

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Petitioner – India Cements Limited Packing Workers Union questions the action of the second respondent - India Cements Limited in altering the service conditions of the member of the petitioner union without giving any notice under Section 9-A of the Industrial Disputes Act, 1947 (for short 'the Act') by calling for the tenders as illegal and contrary to the Settlements under Section 12 (3) of the Act.

Learned counsel for the petitioner union submits that there are 120 Contract labourers, who are the members of the petitioner union, which was registered 20 years back and its members are working in various categories like loading and unloading, packer operating, binders and attenders. Members of the petitioner union are being paid
"D" Grade salaries as per the Wage Board Settlement of Cement Industries from time to time and they are also given benefits such as Medical Benefits, Casual Leaves, Earned Leaves, Washing Allowances, L.T.C. and Educational allowances. While so, the Cement Corporation of India (CCI) was taken over by the second respondent – India Cements Limited (ICL) in the year 1997 and all the employees who were working in CCI were taken over by ICL with continuity of service extending all the benefits.

It is stated that a Memorandum of Settlement was entered into on 23.05.1989 under Section 12 (3) of the Act and the said settlement has not been replaced by any subsequent settlement. Therefore, the said settlement continues to be in force. The second respondent issued a Tender Notice dated 20.09.2004 incorporating certain terms and conditions detrimental to the interests of the members of the petitioner union. Petitioner union approached the Assistant Commissioner of Labour and Conciliation Officer, Kadapa – first respondent and complained about the action of the second respondent on 23.09.2004, but no action was initiated. A representation was also submitted to the second respondent requesting not to alter the service conditions and not to withdraw the benefits, which are being enjoyed by the members of the petitioner union.

It is further stated that as per the terms and conditions incorporated in the tender notification, if the second respondent is allowed to change the service conditions of the petitioner union there would be loss in emoluments up to a tune of Rs.3,000/- per month to each member of the petitioner union, whereas at present each member of the union is getting average emoluments @ Rs.5,000/- per month and if the tender is accepted by the second respondent the members of the petitioner union would get only Rs.2,000/- per month.

The second respondent filed a counter stating that there is no union working in the style of “ICL Packing Workers Union” at the India Cements Limited, Yerraguntla, Kadapa District. Therefore, the writ petition filed by petitioner union is not maintainable as the said union is not in existence. The tenders called for by the second respondent company do not in any way amount to changing the service conditions applicable to any of the members of the petitioner union assuming them as workers within the meaning of the Act and the writ petition filed by them is based on apprehension and there exists no cause of action to maintain the writ petition.

It is stated by the second respondent company that the members of the petitioner union are not directly on the pay rolls of the second respondent as they are being engaged by a contractor under whom they work as contract labour. The second respondent unit was

owned by the Cement Corporation of India (CCI), a Government undertaking. Subsequently, the CCI became Sick and registered with BIFR. BIFR through a global tender brought the plant for sale and the second respondent was the successful bidder and thus acquired the unit. Members of the petitioner union, prior to the acquisition and even after the acquisition by the second respondent, are working as contract labour under a contractor who has been awarded with loading, unloading and packing activity and at no point of time they were on the rolls of the second respondent company. The erstwhile management of CCI entered into various settlements including the last settlement dated 23.05.1989 extending certain benefits and the same have been implemented during the subsistence of such settlements. The said settlement dated 23.05.1989 was valid for a period of three years or till the Wage Board was revised, whichever was earlier from the date of the said agreement. This has worked out itself for three years from 23.05.1989 as agreed upon by the parties in accordance with Section 19 of the Act, which determines the period of enforceability of any settlement.

The present tender notice dated 20.09.2004 has nothing to do with the allegations made by the petitioner union and there is no law prohibiting the second respondent company from calling for tender and awarding them to the one who qualifies. A new contractor has not been fixed up for awarding the work. Members of the petitioner union who work under the existing contractor cannot have any grievance or right to prevent the company from calling tenders and awarding work to new contractors as they do not have any vested right under any law to carry on the work only by themselves. Their right is only to work under a contractor. None of the terms and conditions of the tender notification is applicable or connected to the members of the petitioner union and there is no bearing on the terms and conditions of the service and benefits that accrue from their contractor. The loss projected by the petitioner union in terms of money in respect of each member does not form any basis or has relevancy with the tender notification and that is only their apprehension and such apprehension cannot be adjudicated upon.

It is submitted by the learned counsel for the respondents that the second respondent has categorically informed in the said tender notice to the contractors to follow the statutes enacted by the State and the Central Government in all aspects while executing the contract. There is no illegality or unlawful act attributable to the second respondent in floating the tenders which call for interference by this Court.

It is submitted by the learned counsel for the petitioner union that the members of the petitioner union are governed by the provisions of the Act as well as the award passed in respect of the employees working in cement industries and when a statutory violation is made out, the writ petition is maintainable. It is further submitted that there are statutory violations in calling the tenders by incorporating new terms and conditions, which are contrary to the existing conditions, altering the service conditions. Therefore, the said action of the second respondent is in violation of Section 9-A of the Act. Petitioner union submits that if the conditions of the tenders are implemented; their wages would be reduced by 50 per cent, which amounts to altering the service conditions. The question whether the members of the petition union are on the rolls of the second respondent or not do not make much significance because as per the award of the Cement Wage Board even the contract labour is entitled to salary and other allowances.

Learned counsel appearing for the second respondent submits that there is no change in the service conditions under Section 9-A of the Act in respect of the matter specified in the Fourth Schedule of the Act. Therefore, the allegations of the petitioner union is only an apprehension and premature. The payment of wages to the contract labour is purely related either to the existing contractor or the contractor who would be awarded the contract in future and as on date there is no diminish in the payment of wages. As per the settlement dated 23.05.1989 entered under Section 12 (3) of the Act there is no point to pay wage board wages to the packing plant contract labour as stated by the union. However, there is no agreement between ICL Management and Contractor or the contract labour to pay the wage board wages. Even during the period of CCI there is no valid Settlement under Section 12 (3) or Section 18 (1) of the Act for binding over the employer or the contractor to pay wages as per the Wage Board award. As per Para 5 of the Memorandum of Understanding dated 10.12.1997 the second respondent purchased the unit agreeing to absorb only the employees who are on the rolls of the CCI i.e., Officer, Workmen and Staff but not contract labour. Hence, there is no violation of Para 5 of the Memorandum of Understanding. None of the terms and conditions of the tender notice reveal or direct that the contractor would reduce the wages to the contract labour. There is no provision in the Act for affecting their wages or calling tenders as alleged by the petitioner union and it is purely at the discretion of the management to award contract by inviting tenders. Therefore, the union cannot question the rights of the management. So far the second respondent has

not received any communication by any union or the labour authorities or the contractor specifying that the name of the petitioner union have been changed as ICL Packing Workers Union. Even the Deputy Commissioner of Labour, Kurnool Zone, vide his letter No.B2/R.Unions/2004 dated 08.10.2004 informed the second respondent that on verification of the records it is found that no union is working in the style of “ICL Packing Workers Union” at India Cements Limited, Yerraguntla, Kadappa District.

It is further submitted that in view of the aforesaid disputed questions it is not proper forum for determination of the wages scales and if there is a binding settlement then it is always open for the members of the petitioner union to file an application under Section 33-C (2) of the Act. The petitioner union cannot be permitted to raise all these questions, even before a contractor is fixed, on the pretext that their wages are going to be reduced or the terms and conditions of the settlement are going to be affected.

Insofar as the contention of the second respondent that the writ petition is not maintainable, I am of the opinion that the erstwhile management of CCI was an instrumentality of the State when the entire unit was purchased by the second respondent and the admittedly the second respondent company is not a Government authority. Therefore, it is not a State within the meaning of Article 12 of the Constitution of India amenable to the writ jurisdiction.
In the instant case there are disputed questions of fact as stated above and even otherwise it is the assertion of the second respondent that the service conditions as per Section 9-A of the Act are not affected in any way and there is no cause of action as on today invoking writ jurisdiction by the petitioner union, which is not so far registered in the style of ICL Packing Workers Union. However, if there are any statutory violations the writ petition is maintainable and it is also open for the registered unions to avail appropriate remedies available under the Act or also under the existing settlement as the case may be.

Perusal of the terms and conditions of the tender notice only states that successful tenderer shall be paid wages not less than that prescribed by the Commissioner of Labour under the wages rules and all kinds of welfare measures to be provided as per various statutes inclusive of PF, ESI (as applicable), bonus payment, ex-gratia payment, medical benefits and all other statutory benefits. A reading of any of the conditions of the tender reveals that

there is no change in the existing service conditions. Therefore, I am of the opinion that the petitioner union has filed this writ petition only on apprehension. The disputed questions of fact with regard to the alleged reduction of wages, existence of settlement and the change of registration of the petitioner etc., cannot be adjudicated in a writ petition under Article 226 of the Constitution of India. Therefore, the petitioner union is not entitled for any relief in this writ petition.

Accordingly, the writ petition is dismissed. No costs.

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V. ESWARAIAH, J

November , 2004

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To

1. The Assistant Commissioner of Labour & Conciliation Officer, Kadapa.

2. The Vice President (Manufacturing), India Cements Limited,

Yerraguntla, Kadapa District.

3. Two CCs to GP For Labour, High Court Buildings, Hyderabad (OUT)

4. Two CD Copies.